



ATTENTION

Probate cases on this calendar are currently under review by the probate examiners. Review of some probate cases may not be completed and therefore have not been posted.

If your probate case has not been posted please check back again later.

Thank you for your patience.

Amended First and Final Account and Report of Executor, Petition for Allowance of Compensation to His Attorney, and Reimbursement to Executor for Funeral Expenses and Closing of Estate Due to Exhaustion of Assets

DOD: 10-29-08		<p>BRIAN FRY, Executor with Full IAEA without bond, is Petitioner.</p> <p>Account period: 1-27-09 through 11-30-13 Accounting: \$9,607.98 Beginning POH: \$9,607.98 Ending POH: \$8,211.77 (cash)</p> <p>Executor (Statutory): Waives</p> <p>Executor: \$6,276.77 (Partial reimbursement for funeral costs and costs of administration totaling \$8,250.00, per Exhibit "A")</p> <p>Attorney (Statutory): \$384.32</p> <p>Attorney (Extraordinary): \$1,115.68 Attorney LeVan states that after reviewing the information presented to the attorney for the accounting, she found out that other assets were marshaled and sold without being included on the I&A. Attorney LeVan therefore had to prepare a corrected I&A and amend the accounting.</p> <p>Costs: \$435.00 (filing fee for this petition)</p> <p>Petitioner lists the five Creditor's Claims filed against the estate at Exhibit A.</p> <p>Petitioner requests that:</p> <ol style="list-style-type: none"> 1. Notice of Hearing of this account, report, and petition be given as required by law; 2. The Court make an order approving, allowing, and settling the account and report of the conservator [sic] in all respects as filed; 3. The Court authorize Petitioner to pay his attorney \$1,500.00 as ordinary and extraordinary compensation for her services during the period of this accounting; 4. The Court authorize partial reimbursement for funeral expenses to Petitioner in the amount of \$6,276.77; 5. The Court authorize the Petitioner to close this estate due to exhaustion of all assets; and 6. Any other orders that the Court considers proper. 	<p>NEEDS/PROBLEMS/COMMENTS:</p> <p><u>Continued from 7-17-14.</u></p> <p><u>As of 8-25-14, nothing further has been filed.</u></p> <p><u>SEE PAGE 2</u></p>	
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Page 2 - NEEDS/PROBLEMS/COMMENTS:

1. The Court may require clarification regarding the assets of the estate:

The original I&A filed 12-24-08 (prior to appointment) reflected one line item, \$4,727.19 cash, as of the Decedent's date of death, which was 10-29-08.

Except for notice of administration to creditors and agencies, and the filing of claims totaling \$16,537.21 by various creditors, there was no further activity in the estate until the Court set a status hearing for failure to file a petition for final distribution, which was due in January 2010 pursuant to Probate Code §12200.

In January 2014, Petitioner filed a verified accounting based on the \$4,727.19, which included a statement that the Property On Hand as of 11-30-13 (five years later) was that exact same amount \$4,727.19, except that the POH Schedule indicated that it was actually \$3,452.98 cash and \$1,274.21 "American Century Investments."

Examiner Notes for that petition noted that if cash, and especially investments, had been kept untouched in interest-bearing accounts for 5 years, pursuant to the Duties and Liabilities of Personal Representative filed 12-24-08, interest would have been earned.

Petitioner has now filed a Corrected I&A, which corrects the date of death estate value to include cash of \$3,452.98 only, and adds a vehicle and misc. personal property.

This amended petition is based on the Corrected I&A, and now, contrary to the information provided in the prior petition, states that the POH as of 11-30-13 was actually \$8,211.77, which appears to represent the \$3,452.98 cash plus \$1,800.00 from the sale of the vehicle plus \$2,958.79 from the sale of the misc. personal property.

However, again, Examiner notes that it does not appear that estate funds have been held in an interest-bearing account pursuant to the Duties and Liabilities of Personal Representative.

Further, the \$1,274.21 "American Century Investments" is now not included. The Court may require clarification regarding why this asset is now not considered an asset of the estate.

2. Petitioner does not itemize the costs for which he is requesting reimbursement. The petition refers to Exhibit "A" however, that is the list of Creditor's Claims. Need itemization.

3. Attorney requests compensation totaling \$1,500.00, including the full statutory compensation of \$384.22 based on the amended I&A plus \$1,115.68 in extraordinary fees.

First, need clarification as to how correcting the I&A and amending the accounting to more accurately reflect the acts of the executor during administration constitutes extraordinary services. See Cal. Rules of Court 7.702 and 7.703.

Second, need itemization for extraordinary services pursuant to Cal. Rules of Court 7.702 Local Rule 7.18. (The attorney states she performed 16+ hours of work totaling \$3,200, but does not provide itemization.)

Third, pursuant to Probate Code §12205, the Court may reduce compensation due to the delinquency in closing this estate.

4. Need order. The Court may strike any language confirming and approving the acts of the personal representative during administration. The order should also include a provision for payment of creditors in the event of discovery of assets.

Note: Unpaid creditors include Hinds Hospice, Bank of America, Fresno Credit Bureau, and West Asset Management for Citibank. All were given notice of this hearing.

(1) First Account Current and Report of Conservator and (2) Petition for Allowance of Compensation to Conservator and her Attorney; and (3) for Dispensation of Further Accounts

Age: 61 DOB: 11/14/52		PUBLIC GUARDIAN , Conservator of the Estate, is Petitioner.	NEEDS/PROBLEMS/COMMENTS: <u>Note:</u> If further accountings are not dispensed with, a status hearing will be set as follows: <ul style="list-style-type: none"> • Thursday, October 29, 2015 at 9:00am in Dept. 303 if a one year accounting is due; and • Thursday, October 27, 2016 at 9:00am in Dept. 303 if a two year accounting is due. Pursuant to Local Rule 7.5 if the required documents are filed 10 days prior to the hearings on the matter, the status hearing will come off calendar and no appearance will be required.
		Account period: 05/23/13 – 07/01/14	
		Accounting - \$91,124.37	
		Beginning POH - \$42,758.50	
		Ending POH - \$3,413.21	
Cont. from			
	Aff.Sub.Wit.		
✓	Verified		
	Inventory		
	PTC		
	Not.Cred.		
✓	Notice of Hrg	Conservator - \$4,348.52 (14.75 staff hours @ \$76/hr. and 33.62 deputy hours \$96.hr.)	
✓	Aff.Mail	Attorney - \$2,500.00 (ok Per Local Rule)	
	Aff.Pub.	Bond fee - \$25,000.00	
	Sp.Ntc.		
	Pers.Serv.	Petitioner requests that due to the insufficiency of the estate to pay the fees and commissions that a lien be imposed on the estate for any unpaid balances of the authorized fees and commissions.	
	Conf. Screen		
	Letters		
	Duties/Supp		
	Objections	Petitioner states that the conservatorship estate meets the requirements of Probate Code § 2628(b) to dispense with further accountings. Petitioner requests that the court dispense with further accountings as long as the conservatorship estate continues to meet the requirements of Probate Code § 2628(b).	
	Video Receipt		
✓	CI Report		
	2620(c)	n/a	
✓	Order		
	Aff. Posting		
	Status Rpt		
	UCCJEA		
	Citation		
	FTB Notice	Petitioner prays for an Order: <ol style="list-style-type: none"> 1. Approving, allowing and settling the first account; 2. Authorizing the conservator and attorney fees and commissions; 3. Authorizing payment of the bond fee; 4. Authorizing petitioner to impose a lien on any unpaid balances of authorized fees and commissions; and 5. Dispensing with further accounts. 	

Reviewed by: JF

Reviewed on: 08/25/14

Updates:

Recommendation:

File 3 - Nelson

(1) First and Final Account and Report of Personal Representative, Petition for Settlement (2) for Allowance of Attorneys' Fees for Ordinary Services, (3) Waiver of Commission, Costs, Reserve and (4) for Final Distribution to Verbal Testamentary Trust

DOD: 1-17-13			<p>ISABEL DIAZ-CASILLAS, Sister and Administrator with Full IAEA without bond, is Petitioner.</p> <p>Account period: 1-18-13 through 6-30-14 Accounting: \$155,082.17 Beginning POH: \$155,082.17 Ending POH: \$119,894.35 (cash)</p> <p>Administrator (Statutory): Waived</p> <p>Attorney (Statutory): \$5,652.47</p> <p>Closing: \$5,000.00</p> <p>Petitioner states that pursuant to the wishes of the decedent prior to her death, it was her intention that the following assets be held in trust by Petitioner for the benefit of her two children and that funds be disbursed in the discretion of the trustee for the benefit of each child in an amount in the discretion of the trustee for the general welfare of said children and for payment of any debts owed by the decedent as a result of her death:</p> <p>a. Pension benefits payable to Gina Diaz (sister); b. Supplemental Life Insurance Policy with Symetra Life Insurance Company payable to Gina Diaz c. Basic Life Insurance Policy with Symetra Life Insurance Company payable to Isabel Diaz-Casillas</p> <p>The funds referenced above are to be deposited in the trust account of Quinlan, Kershaw & Fanucchi, LLP, and funds are to be disbursed upon the authority of the trustee.</p> <p>Distribution pursuant to "Agreement Re Verbal Testamentary Trust" is to:</p> <p>Isabel Diaz-Casillas, as Testamentary Trustee for Amando Montero: \$53,252.56</p> <p>Isabel Diaz-Casillas, as Testamentary Trustee for Jessica Montero Hinojosa: \$54,692.82</p>	<p>NEEDS/PROBLEMS/COMMENTS:</p> <p><u>SEE ADDITIONAL PAGES</u></p> <p>Reviewed by: skc Reviewed on: 8-25-14 Updates: Recommendation: File 4 – Lujan</p>
	Aff.Sub.Wit.			
✓	Verified			
✓	Inventory			
	PTC	X		
✓	Not.Cred.			
✓	Notice of Hrg			
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	Sp.Ntc.			
	Pers.Serv.			
	Conf. Screen			
✓	Letters			
	Duties/Supp			
	Objections			
	Video Receipt			
	CI Report			
	9202	X		
✓	Order			
	Aff. Posting			
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	UCCJEA			
	Citation			
✓	FTB Notice			

1. Petitioner states that prior to the decedent's death, the decedent stated that it was her intention that certain assets be held in trust for her two children (who are adults), including:
 - a. Pension benefits payable to Gina Diaz (the decedent's sister) in the net amount of \$8,853.55, after deduction of \$2,770.10 for federal income taxes withheld, and in the net amount of \$2,770.10, after deduction of \$692.52 for federal income taxes withheld;
 - b. Supplemental Life Insurance Policy with Symetra Life Insurance Company payable to Gina Diaz (the decedent's sister) in the amount of \$60,093.70; and
 - c. Basic Life Insurance Policy with Symetra Life Insurance Company payable to Isabel Diaz-Casillas (Petitioner) in the amount of \$75,117.12.

These cash assets were inventoried by the Administrator as assets of the estate on the I&A filed 9-4-13 pursuant to Probate Code §8901; however, these accounts had beneficiary designations.

Petitioner is the designated beneficiary of the Symetra Basic Life Insurance Policy. Is it correct to assume that by this petition, Petitioner consents to the probate of this asset as an asset of the estate?

Gina Diaz, the decedent's other sister, however, is the designated beneficiary of the Symetra Supplemental Life Insurance Policy and the EOC Pension benefits. Gina Diaz has not signed any consent to include these assets as assets of the estate, or to the "Agreement" that would allow these accounts to be probated and distributed ultimately to other beneficiaries.

Need authority for including the assets that designate Gina Diaz as beneficiary as assets of the estate.

2. Petitioner titles her declaration regarding the decedent's intent as "Agreement Re Verbal Testamentary Trust," and requests distribution pursuant thereto.

However, there is no such thing as a "verbal testamentary trust." A testamentary trust is a trust created by a will. See §17300. The decedent died intestate. Therefore, any distribution of estate assets would be pursuant to intestate succession, or beneficiary designation, pursuant to clarification of #1 above.

Further, the "Agreement" is signed only by Petitioner and although it includes a statement that the decedent verbally stated certain wishes, it does not provide details that would be relevant to the establishment of an oral trust in accordance with Probate Code §15207, and this petition has not been brought under that section. For example, no information is provided regarding the specific circumstances of how or when the decedent verbally made these statements, which appear to be very specific, yet contrary to the beneficiary designations that were previously in existence.

If Petitioner is alleging that an oral trust was created by the decedent prior to her death, it would need to be separately established under proper authority by clear and convincing evidence, and then Petitioner could theoretically request distribution of the estate pursuant to such previously established trust.

Alternatively, if the beneficiaries (Isabel Diaz-Casillas and Gina Diaz) and intestate heirs (Armando Montero and Jessica Montero Hinojosa) wish to make an agreement regarding the inclusion of certain assets in this probate estate and distribution pursuant to such agreement, an amended petition may be appropriate; however, whatever form such agreement takes, it would not be considered a "verbal testamentary trust."

SEE ADDITIONAL PAGES

3. Bank of America filed a creditor's claim \$32,911.04, which was rejected per Rejection filed 9-23-13. However, Petitioner does not state whether any lawsuit resulted from the claim/rejection pursuant to Cal. Rules of Court 7.403.

In the petition, Petitioner states that this claim was for a second deed of trust on real property "which was lost to foreclosure." However, the petition does not state when the property was lost to foreclosure. Was it was prior to or after the decedent's death in January 2013? In the "Agreement" signed by Petitioner in June 2013, Petitioner states the residence "is currently in proceedings for a Trustee's sale," which indicates that the real property was not yet foreclosed, and was owned by the decedent at her death and therefore should have been inventoried as an asset on the I&A.

Need verified statement regarding whether any action was taken by the creditor upon rejection of the claim, and clarification re the real property. If the property was not foreclosed, what actions were taken, if any, with regard to the property?

4. Petitioner did not answer #5 on the I&A re Property Tax Certificate. Need verified statement regarding the requirements of R&T Code §480.
5. The disbursements schedule indicates that Petitioner made numerous "advances" to the decedent's two children as trustee of the "trust" without Court authorization in violation of Probate Code §11620. Jessica Hinojosa has received \$10,559.74 and Armando Montero has received \$10,000.00, plus \$2,116.68 for funeral expenses (not itemized) plus \$2,000.00 paid to McCormick Barstow on Armando Montero's behalf (without explanation).
6. Petitioner does not address whether notice was required to the Director of the California Victim Compensation and Government Claims Board pursuant to Probate Code §9202(b).

Note: Based on the above issues, the Court may strike any language approving the acts and transactions of the personal representative.

7. Petitioner requests to retain a reserve amount of \$5,000.00 for closing expenses; however, Petitioner does not indicate what liabilities may be determined to be due. It appears from the disbursements schedule that the decedent's final taxes have been completed. The Court may require clarification regarding the purpose of the reserve, and, consistent with the Court's recent practice, if Court determines an informal accounting of the closing reserve is warranted, Court will set a Status Hearing as follows:

- Thursday, February 26, 2015 at 9:00 a.m. in Dept. 303 for an Informal Accounting of the \$5,000.00 Closing Reserve.

Pursuant Local Rule 7.5, if the document noted above is filed 10 days prior to the date listed, the hearing will be taken off calendar and no appearance will be required. Filing of the informal accounting of closing reserve will not generate a new hearing date.

Petition for Letters of Administration; Authorization to Administer Under IAEA with Limited Authority (Prob. C. 8002, 10450)

DOD: 3/19/2014		RAY BERGMAN , creditor, is petitioner and requests appointment as Administrator without bond. Limited IAEA – ?????? Decedent died intestate (see note #1) Residence: Fresno Publication: NEED Estimated value of the Estate: Personal property - unknown Annual income - unknown Real property - \$530,000.00 Probate Referee: Rick Smith	NEEDS/PROBLEMS/COMMENTS: 1. Petition states the decedent died intestate. However, a Will of Warren Barigian dated 1/27/1998 was deposited with the Court on 8/19/2014. 2. Ray Bergman, proposed Administrator, was not listed on attachment 8 as required. 3. Need affidavit of publication. 4. Need order 5. Need Letter
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Reviewed by: KT			
Reviewed on: 8/25/14			
Updates:			
Recommendation:			
File 5 - Barigan			

Atty Kruthers, Heather H. (for Public Guardian – Petitioner)

Atty Rindlisbacher, Curtis D. (Court Appointed for Conservatee)

Petition for Appointment of Probate Conservator of the Person and Estate (Prob. C. 1820, 1821, 2680-2682)

Age: 74		TEMPORARY EXPIRES 08/28/14		NEEDS/PROBLEMS/COMMENTS:	
		PUBLIC GUARDIAN , is Petitioner and requests appointment as Conservator of the Person and Estate without bond.		See page 20 for related petition	
				Note: Declaration of Hoyle Leigh, M.D. states that Mr. Toscano lacks capacity to give informed medical consent and supports dementia powers, however Petitioner did not request medical consent or dementia powers.	
Cont. from		Estimated Value of the Estate:			
	Aff.Sub.Wit.	Annual income - \$17,436.00			
✓	Verified			1. Need CI report and clearances – CI to provide.	
	Inventory				
	PTC				
	Not.Cred.				
✓	Notice of Hrg			Note: If the petition is granted status hearings will be set as follows:	
✓	Aff.Mail	w/		• Thursday, January 8, 2015 at 9:00a.m. in Dept. 303 for the filing of the inventory and appraisal and	
	Aff.Pub.			• Thursday, October 29, 2015 at 9:00a.m. in Dept. 303 for the filing of the first account	
	Sp.Ntc.				
✓	Pers.Serv.	w/		Pursuant to Local Rule 7.5 if the required documents are filed 10 days prior to the hearings on the matter, the status hearing will come off calendar and no appearance will be required.	
	Conf. Screen	n/a		Note: The Order/Letters do not include medical consent or dementia powers.	
✓	Letters				
	Duties/Supp	n/a			
	Objections				
	Video Receipt				
	CI Report	x		Reviewed by: JF	
	9202			Reviewed on: 08/25/14	
✓	Order			Updates:	
	Aff. Posting			Recommendation:	
	Status Rpt			File 6 - Toscano	
	UCCJEA				
✓	Citation				
	FTB Notice				

Petitioner states: the proposed conservatee is non-ambulatory and uses a wheelchair or travels on his knees where he needs to go. He exhibits poor judgment and cognitive deficits when it comes to his safety. His residence is in very bad condition. The floors and walls are filthy and thou house is infested with cockroaches. There is a very strong odor of urine and feces and many flies. The proposed conservatee claims one of his sons took his Social Security check and he had no food. Adult Protective Services and the Fresno Police have been called to the home numerous times. Conservatorship will ensure that Mr. Toscano's physical and personal needs are continuously met and that his resources are managed for his benefit.

Petitioner requests the authority to sell the proposed Conservatee's **50%** interest in his home located at 1310 N. Thorne Ave., Fresno, and authority to retain the services of a licensed real estate broker to assist in the sale of the real property (Note: See page 20 for similar request re: Mr. Toscano's wife who owns the other 50% interest in the home).

Court Investigator Dina Calvillo filed a report on – NEED REPORT.

Atty Kruthers, Heather H., of County Counsel's Office (for Petitioner Public Guardian)

Atty LeVan, Nancy J., sole practitioner (Court-appointed for Conservatee)

Petition for Appointment of Probate Conservator of the Person and Estate (Prob. C. 1820, 1821, 2680-2682)

Age: 73 years		TEMPORARY GRANTED EX PARTE EXPIRES 7/16/2014; extended to 8/18/2014; extended to 8/28/2014	NEEDS/PROBLEMS/COMMENTS: Page 6 is the related <i>Petition for Appointment of Probate Conservator</i> filed by the Public Guardian for RESENDO TOSCANO , the spouse of this proposed Conservatee (Case 14CEPR00641). Court Investigator Advised Rights on 8/1/2014. Voting Rights Affected – Need Minute Order. Continued from 8/18/2014. <i>Minute Order</i> states all objectors need to file objections with the Court. David Toscano's address is [omitted]. Letters extended to 8/28/2014 with all powers and orders in full force and effect. The following issue from the last hearing remains: 1. Need declaration regarding discussion with the proposed Conservatee for the sale of her residence, pursuant to Probate Code § 2540(b).					
Cont. from: 081814								
<input type="checkbox"/>	Aff.Sub.Wit.	PUBLIC GUARDIAN is Petitioner and requests appointment as Conservator of the Person and Estate with medical consent and dementia powers to administer dementia medications, and for placement in a secured-perimeter facility. Capacity Declaration of Hoyle Leigh, M.D. filed 7/2/2014 supports request for medical consent and dementia powers. Estimated Value of the Estate: Personal property - \$40,000.00 Annual income - \$ 600.00 Total - \$40,600.00 Voting Rights Affected Petitioner states the proposed Conservatee suffers from diabetes, hypertension and other medical conditions, and uses the assistance of a wheelchair due to hip and leg pain; in addition she has a history of depression and suffers from dementia. Petitioner states the proposed Conservatee has been married to RESENDO TOSCANO since 1962, they have 7 children, and there is a long history of domestic abuse between the proposed Conservatee and her husband, as well as financial abuse from some of their children. Petitioner states the family is well-known by several agencies including Adult Protective Services (APS) and the Police Department, the latter agency having received 39 calls in 12 months for physical abuse, financial abuse, warrants and various criminal activity;						
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Reviewed by: LEG								
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File 20 – Toscano								

Petitioner states, continued:

- The APS referral indicates the proposed Conservatee was admitted to Community Regional Medical Center 10 times from January to June 2013 due to being a dependent adult unable to provide care for herself, she has been discharged 7 times to skilled nursing facilities and each time has returned home, and that her home is filthy and cockroach infested;
- The proposed Conservatee's Social Security benefits are allegedly taken by certain of her sons, rather than used for her needs.

Petitioner requests the authority to sell the proposed Conservatee's **50%** interest in her home located at 1310 N. Thorne Ave., Fresno, and authority to retain the services of a licensed real estate broker to assist in the sale of the real property (per *Amendment* filed 7/30/2014 to the *Petition for Appointment of Probate Conservator*; *Amendment* states it is also being requested in the *Petition* filed for the appointment of Conservator of **RESENDO TOSCANO** (Case 14CEPR00641), who holds joint tenancy in the home with proposed Conservatee, that sale of his **50%** interest in the home be authorized.)

Note: Order Appointing Temporary Conservator filed 7/21/2014 grants the following additional powers to the Public Guardian as Temporary Conservator:

- (1) Authority to make medical decisions;
- (2) Authority to keep the Conservatee's whereabouts confidential pending further order of the Court;
- (3) No visitation is allowed with the Conservatee by anyone other than the Conservator pending further order of the Court. (*Please refer to Minute Order dated 7/16/2014.*)

Court Investigator Dina Calivillo's Report was filed on 8/12/2014.

Note: If the *Petition* is granted, Court will set Status Hearings as follows:

- **Thursday, January 8, 2015 at 9:00 a.m. in Dept. 303** for the filing of the inventory and appraisal;
- and
- **Thursday, October 29, 2015 at 9:00 a.m. in Dept. 303** for the filing of the first account of the conservatorship.

Pursuant to Local Rule 7.5 if the required documents are filed 10 days prior to the hearing dates listed, the status hearing will come off calendar and no appearance will be required.